

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Curtis Lee Davis,

Civ. No. 10-4426 (PAM/FLN)

Petitioner,

v.

**MEMORANDUM AND ORDER**

Scott Fisher,

Respondent.

---

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Franklin L. Noel dated November 12, 2010. In the R&R, the Magistrate Judge recommended that the Court deny the Petition for a Writ of Habeas Corpus in its entirety and dismiss this action with prejudice. Petitioner filed timely objections to the R&R.

According to statute, the Court must conduct a de novo review of any portion of the Magistrate Judge’s opinion to which specific objections are made. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). Based on that de novo review, the Court adopts the R&R.

Petitioner claims that the newly enacted Fair Sentencing Act, which increases the amount of crack cocaine necessary to trigger the mandatory minimum sentencing provisions in the Sentencing Guidelines, should be applied retroactively to decrease his 10-year mandatory minimum sentence to a five-year sentence. But as the Magistrate Judge noted, the Eighth Circuit Court of Appeals has foreclosed Petitioner’s argument, finding specifically that the Fair Sentencing Act cannot be applied retroactively. United States v. Brewer, —

F.3d —, 2010 WL 4117368, at \*11 n.7 (8th Cir. Oct. 21, 2010). Indeed, every court of appeals to have considered the issue has determined that the Act should not be applied retroactively. (R&R at 6 n.3.) This Court is not free to disregard binding precedent, and Petitioner's arguments therefore fail.

Accordingly, **IT IS HEREBY ORDERED that:**

1. The Report and Recommendation (Docket No. 4) is **ADOPTED**;
2. The Petition for a Writ of Habeas Corpus (Docket No. 1) is **DENIED**;
3. The Application for leave to proceed in forma pauperis (Docket No. 2) is **DENIED**; and
4. This matter is summarily **DISMISSED with prejudice**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: Tuesday, December 7, 2010

*s/ Paul A. Magnuson*  
Paul A. Magnuson  
United States District Court Judge